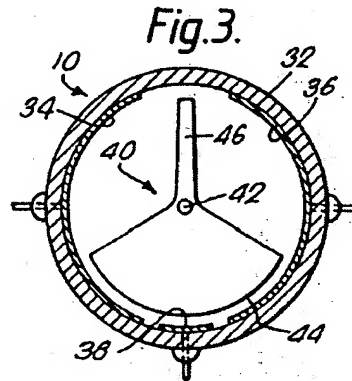


**REMARKS**

Claims 1-15 and 20-27 are pending the application.

**I. Claim Rejections Under 35 U.S.C. §102**

Claims 1-8, 11-13, 21-23, and 25 are rejected under 35 U.S.C. § 102(b) as being anticipated by Cagan et al. (5,159,761). In rejecting the claims, the Examiner cites to Cagan's figure 3 shown below. This rejection of the claims is respectfully traversed.

**A. Independent Claim 1****Cagan fails to disclose a “reference surface”**

Regarding Claim 1, Cagan's figure 3 fails to disclose “a reference surface associated with the body and defining a reference plane having a desired orientation” as recited in claim 1. For this feature, the Examiner seems to identify an arched region formed in a recessed upper surface of figure 3. Specifically, the Examiner states “Cagan et al. discloses ... a reference surface (The recessed upper surface between elements 34 and 36 where element 46 moves in between) associated with the body and defining a reference plan [sic] having a desired orientation.”

There is no indication that this arched region is a “reference surface”. Furthermore, neither the figure nor the description of the figure describes a plane that may be considered a “reference surface” as recited in claim 1.

**Cagan fails to disclose a “reference plane”**

Regarding Claim 1, Cagan’s figure 3 fails to disclose “a reference plane having a desired orientation” as recited in claim 1. For this feature, the Examiner identifies the arched region formed in a recessed upper surface of figure 3.

Claim 1, however, recites a “plane” and not an arch. It is not clear how the Examiner reads Cagan’s “recessed upper surface between elements 34 and 36” to form a “reference surface” or acts in “defining a ... plane” as recited in claim 1. Reconsideration and allowance of independent claim 1 are respectfully requested.

**B. Dependent Claims 2-8 and 11-13****Dependent claims based on an allowable independent claim**

Regarding dependent claims 2-8 and 11-13, each ultimately depends on independent claim 1 shown above to be allowable. Thus, claims 2-8 and 11-13 are allowable for at least the same reasons that claim 1 is allowable.

**C. Independent Claim 21****Cagan fails to disclose an “associated reference surface” and a “reference plane”**

Regarding independent Claim 21, as described above with reference to claim 1, Cagan fails to disclose either a “reference surface” or a “reference plane”. Claim 21 recites “providing a body having an associated reference surface defining the reference plane”.

**Cagan fails to disclose an “adjusting an orientation of the reference surface”**

Furthermore, Cagan fails to disclose an “adjusting an orientation of the reference surface in response to the sensed variable capacitance, the reference plane thereby having a desired orientation” as recited in claim 21.

For this feature, the Examiner cites to Cagan's column 5, lines 35-49, which states "Optionally, the LIM switch may have three positions. In the first position, it will allow to make ALT, 0 adjustment. In the second position it will allow to set-up the upper limit, and in the third position it will allow to adjust the lower limit." The "three positions" described by Cagan, however, are possible positions of a limit ("LIM") *switch*. It is not understood how the LIM *switch* shown in Cagan is a reference surface. Furthermore, the LIM *switch* does not adjust "an orientation of [a] reference surface" as recited in claim 21.

#### **D. Dependent Claims 22-23 and 25**

##### **Dependent claims based on an allowable independent claim**

Regarding dependent claims 22-23 and 25, each ultimately depends on independent claim 21 shown above to be allowable. Thus, claims 22-23 and 25 are allowable for at least the same reasons that claim 21 is allowable.

Reconsideration and allowance of claims 1-8, 11-13, 21-23, and 25 are respectfully requested.

#### **II. Claim Rejections Under 35 U.S.C. § 103**

Dependent claims 9, 10, 20, 24 and 27 have each been rejected based on obviousness. Each of these claims ultimately depends on either independent claim 1 or independent claim 21, which has been shown above to be allowable. Thus, claims 9, 10, 20, 24 and 27 are allowable for at least the same reasons that their base claim is allowable.

Therefore, reconsideration and allowance of dependent claims 9, 10, 20, 24 and 27 are respectfully requested.

**A. Dependent Claim 9**

Claim 9 is rejected under 35 U.S.C. §103(a) as being unpatentable over Cagan et al. (5,159,761) in view of Brihier (4,339,709). This rejection is traversed.

Claim 9 recites a “first vertical plane” and a “second vertical plane”. Cagan’s pendulum (40) only functions about its axis (42). Brihier’s figure 3 does not show a pendulum but rather a star-shaped element (21). The star-shaped element (21) also functions only about its axis (19). Neither Cagan nor Brihier disclose a pendulum with movement in two vertical planes as recited in claim 9.

Reconsideration is respectfully requested.

**B. Dependent Claim 10 and 24**

Claims 10 and 24 are rejected under 35 U.S.C. §103(a) as being unpatentable over Cagan et al. (5,159,761) in view of Roney et al. (5,280,424). This rejection is traversed.

The Examiner provides no motivation or suggestion to combine these references from different arts. Cagan is an electronic level indicator, whereas Roney is an oscillatory chemical system.

Reconsideration is respectfully requested.

**C. Dependent Claims 20 and 27**

Claims 20 and 27 are rejected under 35 U.S.C. §103(a) as being unpatentable over Cagan et al. (5,159,761) in view of Piske et al. (6,313,912). This rejection is traversed.

Neither Cagan nor Piske describes “an external laser module detachability coupled to the reference surface” as recited in claim 20 or “detachability coupling an external laser module to the reference surface” as recited in claim 27. First, Piske’s laser module is internal. Second, Piske does not describe a laser module that is “detachability coupled”.

Reconsideration is respectfully requested.

### **III. Allowable Subject Matter**

Claims 14 and 26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. For at least the same reasons stated above for the allowability of independent claims 1 and 21, dependent claims 14 and 26 are also allowable.

**CONCLUSION**

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejections and objections of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no. 549242002300. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Dated: March 1, 2005

Respectfully submitted,

By   
Bryan H. Wyma

Registration No.: 48,049  
MORRISON & FOERSTER LLP  
755 Page Mill Road  
Palo Alto, California 94304  
(650) 813-5779